



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. Ramon Dasch
Staff Attorney
Legal Services Division
Texas Natural Resource Conservation
Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-654

Dear Mr. Dasch:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25595.

The Texas Natural Resource Conservation Commission (the "commission") has received a request for information relating to the landscaping of certain properties. Specifically, the requestor seeks "copies of all . . . estimates, reports and data concerning the re-landscaping of" property in the Norris Community and near the High Yield Plant in Commerce, Texas. You have submitted the requested information to us for review and claim that section 552.111 of the Government Code excepts it from required public disclosure.

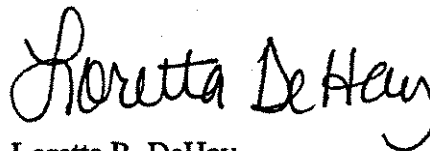
Section 552.111 excepts from disclosure an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined section 552.111 and concluded that it excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. In addition, this office concluded that an agency's policymaking functions do not encompass internal administrative or personnel matters. Open Records Decision No. 615 at 5-6. Where a record is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, recommendations, or opinions of the

drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). Purely factual information in a preliminary draft, however, where severable from information that constitutes "advice, opinion, or recommendation," may not be withheld under section 552.111. *Id.* at 2; *see also* Open Records Decision No. 450 (1986).

You have submitted to us for review certain draft documents prepared by a consultant under contract to the commission. You advise us that the documents will be made available to the public once they become final. The documents relate to landscaping required to restore certain residential properties to an equal or better pre-remediation condition. We conclude that, in this case, the submitted information relates to the commission's policymaking processes. Although much of the submitted information is factual in nature, we also conclude that it represents the advice, recommendations, or opinions of the drafter as to landscaping options, including, *e.g.*, choice, quantity, and placement of trees and shrubs. We conclude, therefore, that the commission may withhold the requested information in its entirety under section 552.111 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 25595

Enclosures: Submitted documents

cc: Mr. David Renshaw
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(w/o enclosures)